

ESTTA Tracking number: **ESTTA616652**

Filing date: **07/21/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	The Sleep Train, Inc.		
Entity	Corporation	Citizenship	California
Address	2205 Plaza Drive Rocklin, CA 95765 UNITED STATES		

Attorney information	Mark A. Steiner Duane Morris LLP One Market Plaza Spear Tower - Suite 2200 San Francisco, CA 94105-1127 UNITED STATES masteiner@duanemorris.com Phone:415-957-3036
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### Applicant Information

Application No	86211062	Publication date	07/15/2014
Opposition Filing Date	07/21/2014	Opposition Period Ends	08/14/2014
Applicant	Perfect Anatomy, LLC 9103 Alta Drive, Unit 1001 Las Vegas, NV 89145 UNITED STATES		

### Goods/Services Affected by Opposition

Class 020. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Pillows
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4006953	Application Date	01/15/2010
Registration Date	08/02/2011	Foreign Priority Date	NONE
Word Mark	GOT SLEEP?		

Design Mark	<b>GOT SLEEP?</b>
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2011/05/01 First Use In Commerce: 2011/05/01 Retail furniture stores; Retail mattress and bedding furniture stores Class 039. First use: First Use: 2011/05/01 First Use In Commerce: 2011/05/01 Distribution services, namely, delivery of furniture

Attachments	77913178#TMSN.png( bytes ) NOTICE OF OPPOSITION -- THE SLEEP TRAIN, INC. v. PERFECT ANATOMY, LLC.pdf(226028 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Mark A. Steiner/
Name	Mark A. Steiner
Date	07/21/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of:

Perfect Anatomy, LLC

Serial No. 86/211,062

Published: July 15, 2014

For: **GET SOME SLEEP**

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

The Sleep Train, Inc., a California corporation, located and doing business at 2205 Plaza Drive, Rocklin, California 95765, believes that it will be damaged by the registration of the mark **GET SOME SLEEP** for: "Pillows" identified in International Class 20 filed March 4, 2014, by Perfect Anatomy, LLC, a Nevada limited liability company.

The grounds for opposition are as follows:

1. By this application, Applicant is seeking to obtain, under the provisions of the Trademark Act of 1946, as amended, registration upon the Principal Register of the **GET SOME SLEEP** mark for "Pillows " in International Class 20.

2. Opposer is the owner of U.S. Registration No. 4,006,953 for the **GOT SLEEP?** service mark for "Retail furniture stores; Retail mattress and bedding furniture stores," in International Class 35 and "Distribution services, namely, delivery of furniture," in International Class 39 and Opposer is the owner of U.S. Registration Nos. 4,297,888, 4,298,114 and 4,298,120 for **GOT SLEEP? BY SLEEP TRAIN** for "Retail store services featuring mattresses, pillows, bed bases and foundations, bed sheets, mattress protection and topper

accessories, sleep accessories, namely, sleep therapy sound systems and sleep masks, footwear, namely, slippers, travel pillows; convertible beds, bed headboards,” in International Class 35 and “Distribution services, namely, delivery of furniture,” in International Class 39 and Opposer filed on December 10, 2013 U.S. Service Mark Application Serial Nos. 86/140,086 and 86/140,091 for GOT SLEEP? for “Retail store services featuring mattresses, pillows, bed bases and foundations, bed sheets, mattress protection and topper accessories, sleep accessories, namely, sleep therapy sound systems and sleep masks, footwear, namely, slippers; travel pillows, convertible beds, and bed headboards,” in International Class 35 and “Distribution services, namely, delivery of furniture,” in International Class 39 (“Opposer’s Marks”) and Opposer has used Opposer's Marks for years long prior to the filing of Applicant's Application Serial No. 86/211,062 .

3. Applicant's mark, opposed herein, was filed on March 4, 2014, pursuant to Section 1(b) of the Trademark Act, §15 U.S.C. § 1051(b), and based upon its intent to use the mark in commerce for the goods identified in the application as set forth in Paragraph 1 hereof. Accordingly, Applicant's rights, if any, in and to the term **GET SOME SLEEP** are subsequent to those of Opposer for its **GOT SLEEP?** mark.

4. Applicant's goods identified as “pillows” in International Class 20 in Application Serial No. 86/211,062 are highly related to the Opposer's services, particularly its retail store services featuring pillows and travel pillows.

5. Applicant's mark **GET SOME SLEEP** in Application Serial No. 86/211,062 for the goods identified therein so resembles Opposer's previously used and registered **GOT SLEEP?** marks as identified in paragraph 2, *supra*, as to be likely to cause

confusion, mistake or deception in the trade and among clientele as to the source, origin or sponsorship of Applicant's goods within the meaning of the Lanham Act.

6. Because Applicant's mark and Opposer's Mark are similar, are used for highly related goods and services, the purchasing public in the United States is likely to believe and would be justified in believing that Applicant's goods originate from Opposer or from an entity which is in some way associated or affiliated with the Opposer, resulting in damage and detriment to Opposer and its reputation in the United States.

7. Registration of Applicant's mark shown in the opposed application will result in damage to Opposer under the provisions of §2(d) of the Trademark Act, 15 U.S.C. §1052(d), pursuant to the allegations stated above.

WHEREFORE, Opposer requests that the registration sought by Applicant in United States Application Serial No. 86/211,062 be refused and that this Notice of Opposition be sustained in favor of Opposer.

**AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT**

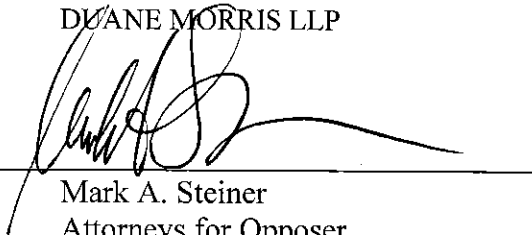
Please charge the fee of \$600 for the opposition in International Classes 16 and 40 to Duane Morris LLP, Deposit Account No. 041679. Please charge any additional fees that may be due, or credit any overpayment, to Deposit Account No. 041679.

Respectfully submitted,

DUANE MORRIS LLP

Date: July 21, 2014

By: \_\_\_\_\_



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DM25034803.1

**CERTIFICATE OF SERVICE**

I hereby certify that on July 21, 2014, I served a copy of the foregoing document entitled **NOTICE OF OPPOSITION** by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

Bryce K. Earl, Esq.  
Cotton, Driggs, Walch, Holley, Woloson & Thompson  
400 South Fourth Street, Third Floor  
Las Vegas, NV 89101-6201

Perfect Anatomy, LLC  
9103 Alta Drive, Unit 1001  
Las Vegas, NV 89145

  
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Kim White